

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 3564 of 2006****With****FIRST APPEAL No. 3565 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH****HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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**DHWARKIBEN WD/O GOPALBHAI KALUBHAI VANZARA & 5 -
Appellant(s)**

Versus**KHUMANSINGH KOYABHAI BARIYA & 2 - Defendant(s)**

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Appearance :

MR SK BUKHARI for Appellant(s) : 1 - 6.
DS AFF.NOT FILED (N) for Defendant(s) : 1,
MR PARTHIV B SHAH for respondent : 2,
MR SHASHIKANT S GADE for respondent : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**and****HONOURABLE MR.JUSTICE AKIL KURESHI****Date : 23/02/2007**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

These appeals arise out of a common accident leading to two claim petitions being filed before the Tribunal. The claim petitions i.e. MACP No.2250 and 2251 of 1999 were consolidated and disposed of by a common judgment and two awards dated 7th March, 2005 passed by the Motor Accident Claims Tribunal (Aux.), Panchmahal, Godhra.

2. On 27th October 1999, two persons, Gopalbhai and Sanatbhai were walking towards Nandapura village. At that time, a luxury bus insured by respondent No.3, Oriental Insurance Company, knocked down the pedestrians causing them fatal injuries. Dependents and heirs of the deceased persons, therefore, filed the above numbered claim petitions seeking compensation of Rs.9,00,000/- lacs and Rs.10,20,000/- respectively from driver, owner and insurer of the luxury bus.

3. From the evidence on record, the Tribunal concluded that the accident occurred due to rash and negligent driving of the luxury bus. With this aspect of the matter, there is hardly any dispute raised before us. The claimants have filed these appeals for enhancement of compensation. Even otherwise, we are in agreement with the conclusion reached by the Tribunal on the issue of negligence

of driver of the luxury bus.

4. With respect to compensation in MACP No.2250 of 1999 (related to First Appeal No.3564 of 2006), the Tribunal found that the deceased was engaged as a driver on a tempo. His prospective monthly income was taken at Rs.3,000/- and multiplier of 15 for the deceased aged 35 years was adopted. Eventually, the Tribunal granted compensation of Rs.4,03,000/- under different heads as follows:

Rs.3,60,000	Loss of dependency benefit
Rs. 20,000	Loss of expectation of life
Rs. 5,000	Mental pain, shock and suffering
Rs. 12,000	Loss of consortium
Rs. 6,000	Transportation and funeral expenses

Rs.4,03,000/-	

With respect to MACP No.2251 of 1999, related to First Appeal No.3565 of 2006, the Tribunal believed prospective monthly income of the deceased at Rs.3,300/- and worked out the dependency benefits at Rs.2200/- per month. The Tribunal adopted multiplier 15 for the deceased who was stated to be aged 36 years at the time of accident. Eventually, the Tribunal awarded total compensation of Rs.4,39,000/- under different heads as follows:-

Rs.3,96,000	Loss of dependency benefit
Rs. 20,000	Loss of expectation of life
Rs. 5,000	Mental pain, shock and suffering
Rs. 12,000	Loss of consortium
Rs. 6,000	Transportation and funeral expenses

Rs.4,39,000/-

5. Learned advocate Shri Sunil Mehta for Shri S.K.Bukhari for the appellants submitted that the Claims Tribunal has erred in awarding compensation which is not adequate. He submitted that the deceased persons were employed as drivers on private tempos. Owners of such tempos were examined before the Claims Tribunal who had deposed that they were paying monthly salary of Rs.2500/- as also daily allowance of Rs.50/-. He, therefore, submitted that the Tribunal ought to have taken the prospective income of the deceased at Rs.4500/- per month.

6. On the other hand, learned advocate Shri Gade for respondent No.3 Insurance Company opposed the appeals. He submitted that the Tribunal has awarded just and reasonable compensation in both cases and no enhancement is required.

7. Having heard the learned advocates for the parties, coming to the question of compensation in First Appeal No.3564 of 2006 (arising out of MACP No.2250/99), we may notice that there was evidence on

record that the deceased was employed as a driver in private tempo. Owner of the tempo was examined before the Tribunal. He had deposed that the deceased was being paid monthly salary of Rs.2500/- and in addition thereto, the deceased also received Rs.50/- by way of daily allowance. Though no documentary evidence was produced to establish the employment of the deceased as driver, driving licence of the deceased was produced on record. Considering these aspects of the matter, the Tribunal believed that the deceased was employed as a driver. To this conclusion, we find ourselves in agreement with. Since the deceased was holding a driving license and was employed as driver of a commercial vehicle, it is not difficult to believe that he would have been paid salary of Rs.2,500/- per month as stated. The deceased was also receiving daily allowance for the number of days of actual work. Considering all these aspects of the matter, as also the relatively young age of the deceased, we find that the prospective income of the deceased could be taken at Rs.4,000/- per month. In our opinion, the Tribunal was conservative in assessing the prospective income of the deceased at Rs.3,000/- per month. One-third of the said figure can be reduced for the personal expenditure of the deceased himself. This would leave dependency benefit of Rs.2667/- which can be rounded off to Rs.2,700/- per month for the claimants. Multiplier of 15 as adopted by the Tribunal need not be disturbed.

8. In the result, dependency benefit for the family can be worked out as Rs.2700 x 12 x 15 = Rs.4,86,000/-. To this amount, we may add Rs.25,000/- for loss to estate, Rs.15,000/- for loss of consortium and Rs.5,000/- for funeral expenses. In all, therefore, the claimants would receive Rs.5,31,000/-.

Since the Tribunal has already awarded Rs.4,03,000/-, under this appeal the claimants shall receive a sum of Rs.1,28,000/- with proportionate cost and interest at the rate of 9 per cent from the date of claim petition till realization.

9. Coming to the quantum of compensation awarded in MACP No.2251 of 1999 related to First Appeal No.3565 of 2006, we find that here also, the claimants had led sufficient evidence before the Claims Tribunal to establish that the deceased was employed as driver. Owner of the tempo in which he was employed was examined before the Tribunal. In addition thereto, driving licence of the deceased was also produced. The owner of the tempo deposed before the Tribunal that the deceased was drawing a salary of Rs.2500/- per month in addition to receiving daily allowance of Rs.50/-. In that view of the matter, considering the evidence on record, here also for the same logic as discussed herein-above, we assess the prospective income of the deceased at Rs.4,000/- per month. One-third thereof would be reduced for the personal expenditure of the deceased leaving a sum of

Rs.2,700/- (rounded off) for the benefit of the family. Here also, considering the age of the deceased, multiplier of 15 as adopted by the Tribunal is left unchanged.

10. In the result, the claimants would receive dependency benefit of Rs.4,86,000 (Rs.2700 x 12 x 15). To this, we may add Rs.25,000/- for loss to estate, Rs.15,000/- for loss of consortium and Rs.5,000/- for funeral expenses. Thus the claimants shall receive Rs.5,31,000/-.

Since the Tribunal had already awarded Rs.4,39,000/- by way of compensation, the claimants shall receive additional compensation of Rs.92,000/- with proportionate cost and interest at the rate of 9 per cent from the date of claim petition till realization.

11. Additional compensation being granted under these appeals shall be deposited by respondent No.3 Insurance Company with the Claims Tribunal by 30th March,2007. Upon such deposit being made in both the cases, the Tribunal shall invest 90 per cent of the additional amounts in fixed deposits with a nationalised bank near the residence of the claimants for a period of five years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimants to withdraw interest periodically accruing on the fixed deposits and a direction to the bank not

to permit the bank account of the claimants to be operated by any power of attorney holder other than a close relative of the claimants. The balance amount shall be disbursed to the claimants by account payee cheques after proper verification.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)